

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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BAY STATE GAS COMPANY)	D.T.E. 02- ____
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**MOTION FOR PROTECTIVE ORDER
OF BAY STATE GAS COMPANY**

I. INTRODUCTION

Pursuant to 220 CMR 1.04(5)(a), Bay State Gas Company (“Bay State” or “Company”) hereby moves that the Department of Telecommunications and Energy (“DTE” or “Department”) grant protective treatment pursuant to G.L. c. 25, § 5D to (1) the pricing provisions of the Gas Supply Agreement between Bay State and EnCana Corporation (“EnCana”); (2) the identity of bidders and proposed pricing provisions submitted in response to the RFP issued on behalf of Boundary Gas Inc. (“BGI”), a consortium of northeast natural gas utilities including Bay State; and (3) BGI’s evaluation and ranking of such bids. The Gas Supply Agreement has been submitted for Department approval pursuant to M.G.L. c. 164, § 94A; the RFP responses and analysis thereof have been submitted to the Department in support of the Company’s proposed agreement with EnCana submitted for review in this proceeding. In support of its request, Bay State states the following.

II. THE INFORMATION FOR WHICH BAY STATE SEEKS PROTECTION FROM PUBLIC DISCLOSURE FALLS WITHIN THE EXEMPTIONS OUTLINED IN G.L. c. 25, § 5D

A. Standard of Review

Pursuant to G.L. c. 25, § 5D, the Department is authorized to protect from public disclosure “trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings.” The Department has developed a three-part standard for assessing requests for protective treatment submitted pursuant to c. 25, § 5D. First, the information for which protection from disclosure is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by “proving” the need for non-disclosure. Finally, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-56 (1999); Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U. 95-59-B/95-80/95-112/96-13, September 2, 1997 Procedural Order. Appropriate considerations with respect to the public interest issue include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Berkshire Gas Company, D.P.U. 93-187/188/189/190 (1994); Boston Gas Company, D.P.U. 92-259 (1993), Essex County Gas Company, D.P.U. 96-105 (1996).

B. Items for Which Protective Treatment is Sought

Bay State seeks Protective Treatment of the pricing terms included in the Gas Supply Agreement, bid responses, including bidder identity and pricing provisions submitted in response to the BGI RFP and the documents pertaining to BGI’s evaluation of those bids.

?? Exhibit FCD-1 is the Gas Supply Agreement.

?? Exhibits FCD-6 and FCD-13 contain the bid proposals of Suppliers submitted in response to BGI's RFP solicitation process for replacement supplies.

?? Exhibits FCD-7, FCD-10, FCD-11, FCD-14 and FCD-15 include analysis of the bid responses and ranking of bids.

C. Bay State Has Met the Department's Standard for Protective Treatment

Exhibits FCD-1, FCD-6, FCD-7, FCD-10, FCD-11, FCD-13, FCD-14 and FCD-15 contain competitively sensitive information. Disclosure of the pricing provisions of the Supply Agreement could be harmful to Bay State and other BGI customers as well as to EnCana. Maintaining the confidentiality of the pricing terms of the Gas Supply Agreement (FCD-1) will assist the parties in negotiating future agreements; disclosure of the parties' negotiating positions would only compromise their respective bargaining positions. Similar pricing provisions have been afforded confidential treatment by the Department in a previous docket. See Bay State Gas Company, D.T.E. 00-102, Tr. at 4.

The bids submitted in response to the RFP and BGI's evaluation and ranking of those bids also warrant protection from public disclosure. It would be inappropriate if this information was made available to the competitors of suppliers submitting the bids, particularly since the majority of the bidders requested that their bids remain confidential. In addition, the suppliers responding to the RFP are not parties to the proceeding and therefore cannot make the request for protective treatment. Further, maintaining the confidentiality of the information contained in these Schedules will assist Bay State and other BGI members in negotiating future agreements; disclosure of this information would only compromise Bay State's bargaining positions. See Bay State Gas Company, D.T.E. 01-98; Bay State Gas Company, D.T.E. 00-102, Tr. at 4.

III. CONCLUSION

WHEREFORE, for the reasons contained herein, Bay State respectfully requests that the Department grant Bay State Gas Company's Motion for Protective Treatment of the bid responses included in Exhibits FCD-1, FCD-6, FCD-7, FCD-10, FCD-11, FCD-13, FCD-14 and FCD-15.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorneys,

A handwritten signature in black ink, appearing to read "John A. DeTore".

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